

Book Reviews

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Book Reviews

Cases and Other Authorities on Legal Ethics. By George P. Costigan, Jr., Professor of Law in Northwestern University. West Publishing Company, 1917. pp. xxvii, 616.

Under the above title Mr. Costigan has brought together an interesting and valuable collection of material that neither practitioner nor student would be likely to read in its scattered form. History, snippets of biography, cases adjudged by courts, hypothetical cases decided by bar committees, professional and lay dissertations, resolutions and canons have been arranged under progressive topics so as to present an orderly and readable treatment of the privileges and duties of a lawyer in his many activities. The book has received flattering comment from the reviewers. Judges, teachers and busy lawyers alike have found it interesting and prophesy better conditions from its reading. As to whether it will solve the problem of teaching legal ethics in the law schools there is probably much difference of opinion.

One reviewer has questioned whether this is a case book, because of the intermingling with cases adjudged by the courts of so much material which might more properly belong in a text book. Mr. Costigan, however, justifies the title of case book (in his introduction) because it contains cases adjudged by courts and by bar committees. Any contention over the appropriateness of the title would seem profitless unless it be conceded that instruction in legal ethics should be by the orthodox case book method. If this be conceded then it would appear that a considerable portion of the treatment of the subject in Mr. Costigan's book is dogmatic in character. Very few of the bar committee adjudications attempt to give any valid reason for their holdings. Many of the judicial opinions reported are little better. If the cases are subjected to analysis by student or instructor they must be read in connection with the text matter that is contained in the book. It may be that this is possible, and that it will prove convenient to have the historical and text matter so accessible.

But assuming that this is an orthodox case book the question remains whether we should have a case book on legal ethics? Can the law curricula bear the burden of the time required by this method of treatment? Will not some other direct or incidental treatment requiring less time suffice? In justification of a case book it might be suggested that a case book treatment of other subjects has made a like treatment of legal ethics imperative. Not only is a student likely to consider the course of little importance because of the different method of treatment, as pointed out by Mr. Costigan, but the emphasis placed upon analysis in case book instruction has taught him to go behind dogmatic statements and to look for fundamental principles. When he finds that principles rest only upon traditions and historic conditions, having little or no application to modern needs, he is dissatisfied and would welcome a change. The American law student of today is democratic. He comes from an atmosphere

impregnated with commercialism. In this respect he differs from the law student in England or the law student of our own colonial days. He does not approach the law with any particular respect for traditions. His democracy is fostered and encouraged by a continuous picking to pieces and subjecting to a rigid test of analysis of decisions by eminent jurists. Is it to be expected that his mind, the product of case instruction, will humbly bow before dogmatic statements of bar associations as to what he should and should not do if based upon nothing more than a tradition in a certain guild? Assuming that his moral nature and training are all that they should be, what is there criminal or immoral about commercial practices in the law? If the merchant may honestly indulge in certain practices why not the lawyer? There is a decided undercurrent of this character among law students, and a betterment of present conditions may not be hoped for until the coming generation of lawyers is given something more than a tradition, more than an answer that refraining from certain practices is the style. Legal ethics will bear an analytic treatment.

Whatever method of instruction a school may select, whether Cases and Other Authorities on Legal Ethics does or does not solve the problem it is a valuable contribution to legal literature and a welcome source book to which lecturer and student may go for material.

O. L. McCaskill.

The Law of Partnership, Including Limited Partnerships. By Francis M. Burdick, formerly Dwight Professor of Law, now Professor of Law Emeritus, in Columbia University. Third edition. Little Brown & Co., Boston, 1917. pp. lxxi, 477.

For the new edition of this book we are indebted to the enactment in a number of states of the Uniform Partnership Act. Its primary purpose is to indicate and discuss the changes in partnership law, which that Act has made and is making. The Act itself, the new Limited Partnership Act, and the Partnership Act of New York, are given in appendices. At the same time, many cases decided during the eleven years since the publication of the second edition have been cited and commented on. The cases cited continue to be in the main either leading or illustrative, for the book is a text and not a digest.

A theory is more or less abroad that the law of partnership is simple. It is sometimes said that one cannot go wrong if he knows and applies the principles of contract. But respect for partnership law—considered as an exercise or an accomplishment—increases with acquaintance. It is submitted that the involutions and evolutions of individual creditors and partnership creditors, partnership realty, the purchase of a partner's interest, can no more be solved by the unaided light of contract law than by the light of nature. Such matters, when one has occasion really to grasp them, are quite capable of making themselves felt; and to a grasp of them Professor Burdick's concise, highly organized, and analytical book is a perfectly invaluable aid.

Henry W. Edgerton.

Inheritance Taxation. By Lafayette B. Gleason, and Alexander Otis. Matthew Bender & Company. Albany, 1917. pp. lviii, 836.

A word of commendation first. The exhaustive research of the authors represents tireless efforts extending over a period of three years. During this time Lafayette B. Gleason has been Transfer Tax Attorney representing the State Comptroller in New York County and has collected over \$20,000,000 of inheritance taxes for the State, which involved the assessment of ten thousand estates and three hundred litigated taxes. Mr. Alexander Otis has been his counsel in this stupendous work.

For State officials to present the bar with such a vast accumulation of readily available material for guidance in the highly technical field presented by inheritance taxes is a magnanimous, public work of which all attorneys and others charged with the duty of administering estates should be deeply appreciative.

The scope of the treatise is not limited to New York taxes. The new Federal Estate Tax and the statutes of every state in the union are exhaustively treated.

Never before have all the inheritance laws been co-related in a master work of this character. In spite of the tenacious vigilance which the authors have demonstrated in representing the State Comptroller's Department, their comprehensive treatment of the complicated mass of inheritance law is from the broadest standpoint.

When it is stated that forty-four states have imposed inheritance taxes and that the laws of thirty-six of these states have been either amended or reenacted in the last four years and that in 1917 seventeen states amended their inheritance tax laws, the tremendous importance of this branch of jurisprudence is at once apparent.

Recent decisions involving questions of inheritance taxes arising in connection with gifts, joint tenancies, survivorship, partnership, agreements, residence, domicile and exemptions are particularly emphasized as matters of current interest.

As nearly all estates are subjected to inheritance taxes in more than one state, a work of this scope covering the entire field of statutes and court decisions, over a period of twenty years, merits the gratitude of the bench and the bar.

Probably the most important and far reaching effect of this scientific presentation of the subject of inheritance tax law is the aid that will be given by it to the Council of States which met for the first time in September of last year in Atlanta, Georgia, as the initial step of a movement to secure uniform tax laws and define the proper limits of Federal and State taxation.

The work is divided into six parts, each of which will be briefly reviewed in the order of occurrence.

Additional features are the United States Statute; the New York Statute; Mortality Tables; State Inheritance Tax officials, with addresses; Districts and Collectors of Internal Revenue; List of Corporations and Where In-Corporated; Forms; Statutes of all States.

PART I

The Tax. Nature of the Tax and the Constitutional Principles that limit and control its Imposition. The property transferred is not the subject of the tax. The value of such property constitutes the measure by which the transfer tax is imposed. Inheritance taxes are excises or imposts and accrue at the time of the death. Gains or losses in the value of the property transferred after the death are disregarded in computing the tax. The nature of this tax makes possible the division of beneficiaries into classes with rates proportionate to the relationship to decedent and the grading of the rate to the amount of property transferred without subjecting the tax to constitutional objection on the ground of not being equal in its burdens and uniform in its application.

PART II

The Transfer. Various Taxable Transfers, by Will; Intestate Law, Gift in Contemplation of Death, etc. Taxable transfers of property are not limited to transfers by will and intestate law. Gifts and colorable sales in contemplation of death are taxable by the inheritance tax laws of many states. Also are transfers by executory contracts which take effect at or after death. Joint bank accounts are taxable in this State upon the death of one of the joint owners. Common law transfers, however, such as dower, curtesy, joint tenancies and tenancies by the entirety are usually not subject to inheritance taxes.

PART III

The Parties. Interests and Residence of Decedent, Relationship of beneficiaries, exemptions, life estates, remainders, mortuary tables and calculations of the value of life interests. Decedent's domicile is synonymous with residence for inheritance tax purposes. Transfers of real estate are subject to inheritance taxes where situated but personal property follows the residence of the decedent. Domicile is of great importance. The question of fact as to decedent's domicile is one upon which the burden of proof rests with the person attempting to establish a change. It is necessary to show both change of residence and intent to change domicile. Statutes of distribution are fully discussed as are exemptions. Mortality tables governing the estimation of life estates and remainders and the application of the same are given.

PART IV

The Property. Problems arising out of its situs and valuation.—Inheritance taxes, being upon the transfer of property and not upon the property itself, are imposed on all property transferrable whether exempt from other taxation or not. As real estate is deemed to be transferred where situated, the tax on such transfer is readily computed. The situs of personal property transferred frequently presents a complex problem. These questions arise in reference to tangibles, mortgages, bonds, commercial paper, corporate stock and other choses in action which are well answered in the work. Valua-

tion of property is one of fact presenting the market conditions at the time of death.

PART V

Procedure. Confined to New York practice, largely followed in other states. All jurisdictions use the probate courts for the assessment and collection of inheritance taxes. Estates are administered by executors or administrators who are personally liable for the tax if the same is not paid out of the estate. This part is of great aid to all those charged with the duty of administering estates.

PART VI

The Statutes. Summary of all State statutes and detailed treatment of the Federal and New York laws. Similarities and divergencies of the various state laws of inheritance taxation are carefully analyzed. The recent United States Statute and the Taxable Transfer Act of this state are given in full.

To Cornellians it will be interesting to know that one of the authors, Alexander Otis, graduated from the Cornell College of Law with the class of 1897. He practised law at Rochester until 1908 in partnership with the late William A. Sutherland, when he retired to devote his time to literary efforts. In 1912 he resumed practice in New York while serving with the Republican State Committee. Since 1915 he has acted as Counsel for Lafayette B. Gleason, Transfer Tax Attorney for New York County, and has briefed or argued many of the important decisions which are discussed in the book reviewed.

*Charles R. McSparren.*¹

Some Legal Phases of Corporate Financing, Reorganization and Regulation. By Francis Lynde Stetson, James Byrne, Paul C. Cravath, George W. Wickersham, Gilbert H. Montague, George S. Coleman and William D. Guthrie. Macmillan & Co., New York. 1917. pp. ix, 389.

We have presented to the public under the above title a series of lectures delivered before the bar of the City of New York in 1916, which we are told were especially intended for the guidance of practicing lawyers in the accomplishment of specific things in the best way. It is clear that the book will prove of more use to such persons than to any others and to them it should prove of very real value, as embodying the experience of men well versed in the problems discussed. The writer of the introductory note disclaims for the authors any intention to produce instructive material for the law student, or to suggest needed legal reforms, and yet, the student, if not the reformer, may glean valuable suggestions from the perusal of this volume.

The first three lectures deal with important problems in the practical administration of large corporations, the fourth and fifth parts treat of "The Sherman Anti-Trust Law," and "The Federal Trade

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Commission and the Clayton Act," while in the last two lectures Mr. Coleman and Mr. Guthrie discuss "The Public Service Commissions." It is submitted that the writer of the introductory note hardly could have been speaking for Mr. Guthrie when he disclaimed for the authors any intention to suggest needed legal reforms. In fact Mr. Guthrie deals with public service commissions as they ought to be rather than as they are, insisting that their powers should be limited to fewer and simpler functions, that experts should be appointed to such commissions, and that their exercise of judicial powers should be eliminated, or at least that full judicial review should be afforded in cases where judicial functions have been exercised. These suggestions are interesting, but certainly run counter to present day tendencies.

C. K. B.

Selected Cases on the Law of Quasi-Contracts. By Edwin H. Woodruff, Dean of the Cornell University College of Law. Second edition. Bobbs-Merrill Co., Indianapolis. 1917. pp. xvi, 650.

The first edition of this casebook appeared in 1905 and the collection has from the beginning been very widely used in American law schools. Teachers have found it rich in instructive and suggestive cases for class discussion, and the arrangement of the material has been so satisfactory that only a slight regrouping of cases on mistake of fact has seemed to be called for in the second edition. The principal changes in this edition besides that already referred to, are the omission of twenty-five cases that were in the first edition and the insertion of fourteen new cases; an increase in the notes which usually embody apposite quotations from judicial decisions; amplification of the treatment of defendant's default by breach of contract, and especially the question of restitution by the plaintiff, and the omission of the article on History of Assumpsit by Dean Ames of Harvard, which was printed as an appendix to the first edition. The collection is brought down to date by the insertion of such important recent cases as *Sinclair v. Brougham*, [1914] A. C. 398, and *Dresser v. Kronsberg*, 108 Maine 423, and by the new annotations in the footnotes, and presents material for a thorough treatment of this interesting branch of the law.

C. K. B.

Oregon Minimum Wage Cases. Brief for Defendants in Error upon Re-Argument. By Felix Frankfurter, assisted by Josephine Goldmark. Reprinted by National Consumers' League. pp. vi, A54, 783.

The public owes a very genuine debt to the National Consumers' League for making generally available this most interesting and instructive brief, which is the joint work of Mr. Louis D. Brandeis before his appointment to the Supreme Court of the United States, and of Mr. Frankfurter and Miss Goldmark. In view of the fact that the decision of the state court, upholding the constitutionality of the Oregon minimum wage law for women was affirmed in the Supreme